

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

| | | |
|---------------------------------|---|--------------------|
| IRENE MARTINEZ |) | |
| Claimant |) | |
| VS. |) | |
| |) | |
| PIZZA HUT |) | Docket No. 208,039 |
| Respondent |) | 210,439 |
| AND |) | |
| |) | |
| FIREMAN'S FUND INSURANCE |) | |
| Insurance Carrier |) | |

ORDER

Respondent appeals from the preliminary hearing Order of Administrative Law Judge Kenneth S. Johnson, dated June 25, 1997, wherein the Administrative Law Judge granted claimant ongoing medical treatment with Pedro A. Murati, M.D.

ISSUE

Did the Administrative Law Judge err in disregarding the opinion of the treating physician that claimant's present physical problems are not causally related to a work-related accident?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds that the Order of Administrative Law Judge Kenneth S. Johnson dated June 25, 1997, should be affirmed for preliminary hearing purposes.

Claimant originally suffered injury to her right upper extremity in October 1994. She ultimately came under the treatment of Dr. Pedro Murati, a physiatrist, who rated and released her on March 5, 1996. Claimant had an appointment with Grace L.

Stringfellow, M.D., a physical medicine and rehabilitation specialist, on June 7, 1996, for an independent medical examination and rating. At that time claimant had continued complaints of pain radiating from her arm up into her shoulder, with numbness in her right hand and forearm. Dr. Stringfellow felt claimant had reached maximum medical improvement at that time, although claimant did exhibit ongoing symptomatology. Claimant again sought treatment with Dr. Murati on November 12, 1996, at which time Dr. Murati diagnosed myofascial pain syndrome stemming from complaints of pain in claimant's neck, right shoulder, and right arm. This diagnosis was substantially the same as that reached by Dr. Murati earlier. Claimant again sought medical treatment with Dr. Murati on February 19, 1997, with complaints of pain in the neck, shoulders and right arm.

Dr. Murati's report of May 19, 1997, did indicate that there was no connection between claimant's ongoing symptomatology and her original injury in October 1994. However, the Administrative Law Judge found, and the Appeals Board agrees, that there was a connection as claimant's complaints have been consistent throughout. The opinion of Dr. Murati did not appear to be based upon anything substantial. The medical evidence indicates that claimant has had ongoing symptoms over many months with the symptoms being consistent in location, although, somewhat increased in severity.

Claimant is the only person to testify in this matter. She advised she had suffered no additional injuries and that her pain complaints were consistent throughout. The Appeals Board finds, for preliminary hearing purposes, that the medical evidence coupled with claimant's testimony, supports a finding that claimant's ongoing symptomatology is related to the original injury of October 25, 1994. Therefore, the Order of Administrative Law Judge Kenneth S. Johnson granting claimant ongoing medical treatment with Dr. Murati should be, and is hereby, affirmed.

WHEREFORE, the Appeals Board finds that the Order by Administrative Law Judge Kenneth S. Johnson, dated June 25, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1997.

BOARD MEMBER

c: Lawrence M. Gurney, Wichita, KS
Richard A. Boeckman, Great Bend, KS
Kenneth S. Johnson, Administrative Law Judge
Philip S. Harness, Director